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Supreme Court, U.S.
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No. 03-74

In The

Supreme Court of the United States

PAW PAW'S CAMPER CITY, INC.,

Petitioner,

v.

JAMES V. JIMENEZ,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

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PAW PAW'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION OF THE PETITION FOR WRIT OF CERTIORARI

Petitioner, Paw Paw's Camper City, Inc. (hereinafter "Paw Paw's"), hereby incorporates, for the purposes of this brief, the information provided in the Petition for Writ of Certiorari sections labeled: "Questions Presented," "List of Interested Parties," "Corporate Disclosure Statement," "Jurisdiction," "Statutory and Regulatory Provisions Involved," and "Statement of Issues Presented." Paw Paw's is satisfied to incorporate the section from the Petition for Writ of Certiorari entitled "Course of Proceedings and Disposition of the Case Below" with the additions suggested in the corresponding section of Respondent's Brief in Opposition to Petition for Writ of Certiorari. (Jimenez's Response, p. 1).

STATEMENT OF THE FACTS

Petitioner, Paw Paw's, hereby incorporates its Petition for Writ of Certiorari and Response to Conditional Cross Petition for Writ of Certiorari and thereby adopts, for purposes of this brief, its original Statement of the Facts. However, Paw Paw's corrects the following information relayed in its "Course of Proceedings and Disposition of the Case Below" section. In said section of the original Writ of Certiorari, Paw Paw's submitted that its post-trial motions were filed on November 27, 2002. As a correction, Paw Paw's submits it filed said motions on November 27, 2001. Thus, Paw Paw's timely sought review.

In reply, Paw Paw's submits that Respondent, James V. Jimenez's ("Jimenez") Brief in Opposition to Petition for

Writ of Certiorari asserted certain erroneous facts. In his submission, Jimenez went to great lengths to portray Paw Paw's and its owners as racists. Specifically, Jimenez contends he was the "only person of color in sales/ management." (Jimenez's Response, p. 3). Remarkably, Jimenez ignores that his brother, David Jimenez, was not only a "person of color in sales/management," but that his brother, an Hispanic American, partially owned the company at the time Jimenez was hired. Jimenez's blatant attempt to ignore his brother's heritage and ownership interest is erroneous and refutes Jimenez's assertions of sweeping, calculated racism at Paw Paw's.

Additionally, the Jimenez brothers were not the only minorities that were employed in management at Paw Paw's. In his response, Jimenez asserted he was the only minority present in Paw Paw's "all white sales and management staff." (Jimenez's Response, p. 5). Again, such an assertion ignores other employees' ethnic heritage. Even after the untimely death of David Jimenez, minorities continued to be employed as management staff at Paw Paw's. Ironically, Jimenez's alleged main abuser, Matt Margetta, General Manager and part owner, testified to and acknowledged his Italian heritage. In no uncertain terms, though Jimenez continues to paint a skewed picture, he was not the only Paw Paw's minority employee or management member.

Furthermore, W. B. Herring, Jr. and Matt Margetta repeatedly denied any such intentional discrimination or reprehensible conduct. At trial, both Mr. Herring and Mr. Margetta testified and specifically denied intentional and non-intentional discrimination. In support, aside from argument, Jimenez has failed to present sufficient evidence of this alleged intentional wrong doing. Consequently,

Jimenez's intentional discrimination arguments should continue to be dismissed as unfounded, as the jury verdict indicated.

REPLY POSITION IN SUPPORT OF GRANTING PAW PAW'S WRIT OF CERTIORARI

Jimenez erroneously contends that the $80,000 punitive damage award, despite the jury's award of no actual damages and final actual damages of one dollar as awarded by the judge through additur, is not in conflict with the binding decisions of *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 116 S.Ct. 1589, 1601 (1996) and *State Farm Mutual Automobile Insurance Company v. Campbell*, ___ U.S. ___, 123 S.Ct. 1513 (2003). In doing such, Jimenez critically misplaces the focus of the Due Process analysis on the concept of overreaching, while ignoring the central issue in both controlling decisions: the arbitrary deprivation of a citizen's property as unconstitutional. This Honorable Court, in *BMW*, established three guideposts for determining whether a punitive damage award is excessive, only after amplifying the purpose of the guideposts by stating that "elementary notions of fairness enshrined in our constitutional jurisprudence dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also the severity of the penalty that a state may impose." *BMW* at 574 and *State Farm* at 1520. As such, the decisions of *BMW* and *State Farm* are not only binding and applicable in this case, but dictate that the $80,000 punitive damage award to Jimenez is grossly excessive, as it is unjustified at the incredibly disproportionate ratio of 80,000 to 1.

Jimenez consistently theorizes that the finding of no actual harm is of no moment and that punitive damages can fairly be based on potential harm to the plaintiff when no actual harm is found. In contradiction, Paw Paw's submits while "potential harm" is mentioned in the second *BMW* guidepost, the term is not meant as a panacea by which plaintiffs who have neglected to prove actual harm may still justify an otherwise unsupportable, disproportionate and unconstitutional punitive damage award. Under Jimenez's analysis, he should be allowed to capitalize on actual damage awards which have been proven and supported in other cases, by other plaintiffs and under other facts, despite his total inability to prove actual harm to himself. In the interests of fairness and equity, the proportionality of Jimenez's punitive damage award must be reviewed in light of his own actual damage award, not actual damage awards rendered in other cases. Paw Paw's asserts the potential harm factor in an analysis must be supportable, specifically quantifiable, and inextricably linked to the particular plaintiff, or otherwise be a gross example of the very arbitrary deprivation of property that the *BMW* decision is meant to extinguish.

Jimenez asserts adjusting the actual damage award to account for potential harm and not restricting punitive damage awards to amounts that are proportionate to the actual damage award "allows a trier of fact to punish an offender whose conduct is horrendous but may not result in calculable harm." (Jimenez's Response, p. 11). Paw Paw's contends this particular case is a prime example of an instance where actual damages, if they had been present, would have been easily identifiable and calculable. At trial, Jimenez offered evidence to the jury concerning actual damages. Jimenez presented figures depicting

alleged past lost wages, possible negative impact of the alleged conduct on his future earning potential, and testimony of a doctor concerning the effects of the alleged conduct on Jimenez's mental state. Despite enjoying ample opportunity, Jimenez failed to prove actual damages because all of the aforementioned evidence was categorically rejected by the jury.

Jimenez erroneously contends the punitive damage award is "directly related" to "the reprehensible conduct toward Mr. Jimenez," by Paw Paw's staff. (Jimenez's Response, pp. 10-11). Paw Paw's maintains that had any such "direct relationship" been established at trial, an award of actual damages would have been made in favor of Jimenez, but instead Paw Paw's has been punished through the incredibly disproportionate punitive damage award for conduct that logically, considering the nominal amount of actual damages, cannot be linked to Jimenez personally. However, no such actual damage award was made by the jury, though actual damages would have been simple to calculate, and only a nominal amount of one dollar was awarded by the judge. Therefore, any punitive damages leveled against Paw Paw's must be for conduct unrelated to Jimenez personally because no personal harm to Jimenez was established at trial. The only other plausible explanation is that if the alleged conduct against Jimenez is the supporting basis for the punitive damage award, the punitive damage award is improper. If the conduct of Paw Paw's was not egregious enough to cause actual harm to Jimenez, the conduct certainly cannot be egregious enough to warrant punitive damages.

Jimenez proposes that an arbitrary deprivation of property cannot be present in this case because Congress has authorized punitive damage awards up to $300,000.00.

However, proper reading of applicable guidelines recognizes limitations govern such awards. Specifically, 42 U.S.C.A. § 1981(b)(3) provides:

> The sum of the amount of compensatory damages awarded under the section for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses, and the amount of punitive damages awarded under this section, shall not exceed, for each complaining party –
>
> (A) in the case of a respondent who has more than 14 and fewer than 101 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $50,000.00;
>
> (B) in the case of a respondent who has more than 100 and fewer than 201 employees in each of the 20 or more calendar weeks in the current or preceding calendar year, $100,000.00;
>
> (C) in the case of a respondent who has more than 200 and fewer than 501 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $200,000.00; and
>
> (D) in the case of a respondent who has more than 500 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $300,000.00. 42 U.S.C.A. § 1981(b)(3).

Paw Paw's does not meet the requirements for a $300,000.00 punitive award. In short, Paw Paw's did not employ in excess of 500 employees during the requisite time period. Though Congress has authorized awards of $300,000.00, such awards have been "authorized" in conjunction with the size of the respondent's work force and the gravity of the conduct, reserving the highest

awards for the most egregious cases of discrimination. Consequently, Jimenez has misinterpreted the "authorized" punitive damage awards, as they conceivably could not apply to Paw Paw's, because Paw Paw's work force did not mandate maximum award figures (at fewer than 200 employees), nor could the maximum punishment be fairly exacted against Paw Paw's. Paw Paw's submits that interests of fairness dictate that a maximum penalty only be awarded in cases where conduct is at least egregious enough to be recognized as actual harm to the plaintiff.

Finally, Jimenez's denial of the existing inter-circuit conflict must be discredited. Paw Paw's has supported the assertion of an inter-circuit conflict with recent case law, with which Jimenez takes exception, in order to emphasize the role of the *State Farm* decision in current jurisprudence. However, in addition to the cases referred to in the Petition for Writ of Certiorari, Paw Paw's submits that many additional cases indicate the presence of an inter-circuit conflict regarding the proper application of *BMW* and/or *State Farm*, including (not an exclusive list): *Johanson v. Combustion Engineering, Inc.*, 170 F.3d 1320 (C.A.11 1999), *Swinton v. Potomac Corp.*, 270 F.3d 794 (9th Cir. 2001), *Deters v. Equifax Credit Information Services, Inc.*, 981 F.Supp. 1381 (10th Cir. 1997), *Kinslow v. American Postal Workers Union, Local Chicago*, 222 F.3d 269 (7th Cir. 2000), *Lee v. Edwards*, 101 F.3d 805 (2nd Cir. 1996), *Ross v. Kansas City Power and Light Co.*, 293 F.3d 1041 (8th Cir. 2001). Paw Paw's recognizes the diversity of circumstances present in aforementioned cases; however, the application of *BMW* has undoubtedly produced wide-ranging results that call for further clarification and direction.

CONCLUSION

For the foregoing reasons, Petitioner, Paw Paw's Camper City, Inc., prays the Writ of Certiorari be granted. Through the ruling in this case, Paw Paw's has been punished in contradiction to the applicable case law. Petitioner respectfully requests Certiorari be granted and, upon consideration of the issues and arguments raised in its Petition and herein, the nominal and punitive damage awards, as well as the award of attorney's fees and costs against Paw Paw's, be vacated.

Respectfully submitted,

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